THE HON'BLE MR JUSTICE A.GOPAL REDDY
and
THE HON'BLE MR JUSTICE B. CHANDRA KUMAR

A.S.No.1600 of 2000
And
A.S.No.91 of 2007
And
A.S.M.P.No.1188 of 2009

COMMON JUDGMENT: (per Hon'ble Sri Justice A. Gopal Reddy)

These two appeals arise out of the very same judgment and decree dated 28.02.2003 passed by the District Judge, Nellore, in O.S.No.34 of 1998. Hence they are heard together and disposed of by this common judgment.

O.S.No.34 of 1998 was filed by the first respondent/plaintiff for recovery of a sum of Rs.15,02,990.07 ps., due under a transaction under equitable mortgage of the suit schedule property. The said suit was decreed at Rs.10,13,485.60 ps., with interest @ 18% p.a. from the date of suit till the date of redemption i.e., 28.05.2003 and future interest at 6% p.a. till the date of realization.

Questioning the judgment and decree passed by the trial Court, the fourth defendant filed A.S.No.1600 of 2003 whereas the wife and children of the third defendant, namely, Yadlapalli Velnati Babu, after obtaining leave, filed A.S.No.91 of 2007 stating that their father-in-law, Y. Govindu Chetty ceased to be a partner of the first defendant firm, as he executed a Will and testament on 24.09.1992 bequeathing his interest in the property in favour of fourth defendant and his wife to enjoy the property during their life time. Since they are evicted by the decree they may be permitted to question the decree.

Pursuant to the preliminary decree passed in the suit, the first respondent/plaintiff filed I.A.No.250 of 2003 for passing of final decree

for sale of the suit schedule property realizing the decretal amount. During the pendency of the final decree proceedings, it seems, the matter has been settled between the parties and entire decree has been satisfied. To the said effect, a memo has also been filed by the plaintiff on 23.10.2006 stating that the plaintiff received the amount due from the respondents/defendants and filed full satisfaction memo. Recording the full satisfaction memo filed by the plaintiff, the final decree proceedings have been closed on 30.10.2006.

In view of closing of final decree proceedings on filing of full satisfaction memo, the fourth defendant filed A.S.M.P.No.1188 of 2009 in A.S.No.1600 of 2003 and also a memo stating that in view of satisfying the decree, the original sale deed on which equitable mortgage was created, which was filed by the plaintiff under Ex.A.1 in the lower Court, shall be returned to the appellant i.e., the fifth defendant.

Sri Ramalingeswar Reddy, learned counsel appearing for respondent/plaintiff has no objection for return of Ex.A.1-sale deed to the fifth defendant in view of full satisfaction memo filed by him.

Accordingly, the A.S.M.P. is ordered and the Registry is directed to transmit the records to the lower Court forthwith and report compliance of the same. On such transmission of records, the lower Court is directed to return the original sale deed to the fifth defendant, namely, Y. T. Sundara Rao.

Since the entire decree has been satisfied before the lower Court, and the appellants filed a memo and prayed to dismiss the appeal as settled out of Court, both the appeals are dismissed as not pressed. There shall be no order as to costs.

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(A.GOPAL REDDY, J.)

(B. CHANDRA KUMAR, J.)

12th August, 2009
Js.